AMERICAN PUBLIC POWER ASSOCIATION
Powering Strong Communities

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Federal Efforts to Address Climate Change

Summary

For over a decade, Congress and the Environmental Protection Agency (EPA) have sought to address climate change through legislation and regulations. Congressional efforts to move climate legislation failed in 2010 with the Senate's decision to not take up a bill due to a lack of support in the chamber. In 2015, EPA issued rules to regulate carbon dioxide (CO_2) emissions from fossil fuel-fired power plants. In 2019, those rules were repealed and replaced under the direction of President Trump. In January 2021, EPA's power plant emissions rules were vacated and remanded and will likely be written by the agency, under the direction of the Biden Administration, to more aggressively reduce CO_2 emissions from fossil fuel-fired power plants. In addition, congressional interest in addressing climate change continues with the possibility of legislation being enacted to extend and expand various clean energy tax credits, among other things.

Public power utilities recognize the threat climate change poses. They are reducing their greenhouse gas (GHG) emissions through a variety of means, including increased use of renewable energy resources, the development of new nuclear power, the addition of distributed energy resources and storage, and the adoption of energy efficiency programs. Many are also actively working in their communities to promote the electrification of the transportation sector, including deploying charging infrastructure, offering rebates for electric vehicles, and developing special rate structures to incent off-peak charging. The American Public Power Association (APPA) supports congressional action to address climate change on an economy-wide basis. Climate legislation must set clear, realistic targets and provide maximum flexibility to covered entities. It must also be crafted in a manner that allows the electric sector to reduce CO_2 emissions while maintaining a reliable grid and affordable retail rates.

Background

In 2007, the U.S. Supreme Court issued its decision in *Massachusetts v. Environmental Protection Agency.* In that case, the court held that EPA has the authority to regulate tailpipe emissions of GHGs under the Clean Air Act (CAA) because GHGs are pollutants that potentially "endanger" public health and welfare. The court remanded the case back to the agency to either issue an endangerment finding for GHGs or provide a basis for not issuing an endangerment finding.[1] On remand, EPA issued an endangerment finding in December 2009, which states that GHGs from motor vehicles do endanger public health and welfare. The following year, the agency entered into a judicial settlement where it agreed to promulgate New Source Performance Standards (NSPS) for two existing source categories—power plants and refineries.

During this same period, there were efforts in Congress to address climate change. In 2007, the Consolidated Appropriations Act, 2008, directed EPA to publish a rule requiring public reporting of GHG emissions from large sources. Less than two years later, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation, commonly referred to as "Waxman-Markey," would have established an economy-wide GHG cap-and-trade system. The Senate did not consider the House bill; nor did it consider its own comprehensive climate bill due to the lack of sufficient support among senators.

With Congress failing to enact climate change legislation in 2010, the Obama Administration's EPA issued proposed New Source Performance Standards for new fossil fuel-fired power plants in March 2012. Just over three years later, in August 2015, EPA issued a final rule to regulate CO_2 emissions from new power plants ("New Plant Rule"),[2] as well as a rule to

1 An endangerment finding is a necessary precondition under the CAA to take regulatory action.

2 Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Generating Units, 80 FR 64509.

regulate CO_2 emissions from existing power plants (called the "Clean Power Plan" or "Existing Plant Rule").[3] The CPP set final emission guidelines in the form of nationally uniform CO_2 emission performance rates for coal-fired and natural gas-fired power plants. It also set CO_2 emissions-reduction goals for each state and allowed for emissions reductions through energy efficiency upgrades at power plants and fuel switching from coal to natural gas or renewables.

In October 2015, more than 150 state and industry petitioners challenged the legality of the rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The D.C. Circuit held oral argument on the case, but never issued a decision. The case was subsequently dismissed in September 2019, with the court noting challenges to the rule were moot due to the repeal of the CPP and replacement of the rule with the Affordable Clean Energy (ACE) rule.

Administrative Action

In June 2019, EPA issued the final ACE rule, which repealed the CPP; promulgated new emissions guidelines for regulating CO_2 emissions from existing coal-fired power plants; and established new implementing regulations governing the submission and review of state plans and future guidelines. Upon publication in the *Federal Register* in September 2019, numerous states and organizations challenged the ACE rule in the D.C. Circuit. In January 2021, the court vacated and remanded the rule back to EPA, concluding that the agency had misconstrued the first step set forth in section 111(d) of the CAA by construing that the best system of emissions reduction could only take place at the power plant. The court said that "system" should be given its ordinary meaning, that the entire generation and delivery of electricity was a system, and that EPA had the flexibility to evaluate possible emission reductions based on the system, not actions that apply "at" or "to" an electric generating unit (EGU). Further, the court found "the ACE rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious." Subsequently, in October 2021, the U.S. Supreme Court agreed to hear four petitions challenging the D.C. Circuit's 2-1 decision that the CPP was a proper exercise of EPA's authority while the ACE rule that replaced it took too narrow a view of that authority. The petition questions whether EPA has the statutory authority under 42 U.S.C. § 7411(d) to completely restructure the electricity system nationwide. Oral arguments in the case are scheduled for February and a decision is expected before the court adjourns its term on June 30, 2022.

3 Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units, 80 FR 64661.

Climate change is a top priority for the Biden Administration. Shortly after taking office, President Biden issued Executive Order (EO) 14008, "Tackling the Climate Crisis at Home and Abroad." The EO directs the government to achieve net-zero-emissions economy-wide by 2050, create a carbon-free power sector by 2035, and reduce GHG emissions from 2005 levels by 50-52 percent in 2030 as part of the U.S. Nationally Determined Contribution. The administration rejoined the Paris Climate Agreement and is reestablishing an interim social cost of carbon "to ensure federal agencies account for the full costs of" GHG emissions. EPA is considering rulemaking proposals to address GHG emissions from the transportation, oil and natural gas, and power sectors. Notwithstanding the U.S. Supreme Court's review of the ACE rule, the agency is working on a new set of emission guidelines for states to follow in submitting state plans to establish and implement performance standards for GHG emissions from existing fossil fuel-fired EGUs. A new proposed rule is expected in July 2022.

Congressional Activity

Climate issues have been a key legislative focus of congressional Democrats in the 117th Congress. The House of Representatives thus far has built on the work it undertook in the 116th Congress and has been considering a host of policies to address the effects of climate change. House Energy & Commerce Committee Democrats began holding hearings focused on climate issues in February 2021 and in early March 2021 introduced a revised version of the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act (H.R. 1512). The legislation would create a clean energy standard that would require retail electric suppliers to obtain 100 percent of their electricity from clean energy sources by 2035. It also includes a host of provisions on transmission, electrification of the transportation sector, grid modernization, distributed energy resources, and hydropower, among others.

The CLEAN Future Act was the basis for a subsequent effort by House and Senate Democrats to create the Clean Electricity Performance Program (CEPP) to accelerate the reduction of GHG emissions from electric utilities by requiring increasing amounts of clean electricity. The language, included in H.R. 5376, the Build Back Better Act, that was approved in the House in September 2021, would amend the Federal Power Act to require electric utilities to increase their percentage of clean electricity annually between 2023 and 2030. Under the bill, the Department of Energy (DOE) would administer the CEPP and issue grants to electric utilities meeting the annual clean energy compliance obligation. Such grants could be used for investments in clean energy infrastructure, reducing electricity rates, or other activities, such as energy efficiency or electrification, that further reduce GHG emissions. Electric utilities failing to

meet the targets in the bill would be subject to financial penalties. The CEPP was drafted in a manner to increase the percentage of clean electricity for the electric sector to 80 percent by 2030.

In the Senate, the CEPP was dropped from the Build Back Better Act due to concerns about the aggressive timetable for achieving annual clean energy goals, the impact of penalties for failure to meet such goals on electric rates, and the merits of giving the electric sector money to reduce emissions when it is already reducing emissions. However, the Senate included provisions to expand and extend various clean energy tax credits to spur the deployment of clean energy technologies. Under the language, public power utilities would be eligible for these tax credits, helping them build needed clean energy infrastructure (For more information, please see APPA issue brief, "The Need for Direct Payment of Refundable Tax Credits for Public Power"). The Build Back Better Act remains pending in the Senate. It is unclear if a vote will occur on the bill or if it will be further changed to address non-climate related concerns with the legislation.

In addition, in November 2021, President Biden signed H.R. 3684, the Infrastructure Investment and Jobs Act. The new law provides much needed federal funding for a host of programs to promote clean energy, energy efficiency, grid resilience, and electrification of the transportation sector. Specifically, the new law includes $7.5 billion in federal funding for electric vehicle infrastructure, $11 billion for grid resilience, and $21.5 billion for federal research, development, and deployment programs, including for carbon capture and storage, hydrogen, and advanced nuclear. Various federal agencies, including DOE and the Department of Transportation, are now implementing the programs established or expanded in the law. APPA believes many of these programs will help public power utilities further reduce their GHG emissions or facilitate their ability to reduce emissions from other sectors, such as transportation.

APPA Position

Public power utilities are reducing their GHG emissions through a variety of means. Many are increasing their use of renewable energy resources, such as hydropower, wind, solar power, and geothermal. They are also working with their customers to enable distributed energy resources, which can reduce the need for power from traditional fossil fuel-fired power plants. Public power utilities are involved in the construction of two new nuclear units at Plant Vogtle in Georgia and are actively pursuing the development of small modular reactors (SMRs).[4] Many public power utilities have implemented energy efficiency programs to help their customers reduce their power usage. Others are also actively working in their communities to promote the electrification of the transportation sector. Many of these efforts have been undertaken voluntarily rather than being required by state or federal law.

APPA supports congressional action to address climate change. The association believes Congress needs to establish a statutory framework that provides electric utilities with regulatory certainty. Such legislation must set realistic, clear targets and provides maximum flexibility to covered entities. As Congress works on climate legislation, it should include policies that would reduce CO_2 emissions while keeping electricity affordable and reliable. Such policies include promoting nuclear power, distributed energy resources, electric vehicles, energy storage, energy efficiency, and hydropower. Congress must also make significant investments in research, development, and demonstration of advanced technologies needed to reduce GHG emissions, including advanced nuclear, hydrogen, and carbon capture, storage, and utilization technologies. The Infrastructure Investment and Jobs Act was a good first step, but more can be done by Congress to promote clean energy technologies. Public power is ready to work with Congress as it develops climate legislation by providing input on how to do so in a way that keeps electricity affordable, reliable, and sustainable.

APPA Contacts

Desmarie Waterhouse, Vice President, Government Relations & Counsel, 202-467-2930 / dwaterhouse@publicpower.org

Carolyn Slaughter, Director of Environmental Policy, 202-467-2943 / cslaughter@publicpower.org

The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

4 SMRs are small nuclear reactors that could generate up to 300 megawatts of power and be linked together to provide incremental power as load grows.